

EXCEPTIONS TO REQUIREMENTS TO FILE TERMINATION PETITION

A determination not to seek a termination of parental rights may be appropriate if one or more of the following exceptions exists:

- A relative is caring for the child.
- A compelling reason has been documented that termination of parental rights would not be in the best interest of a child.
- Services that are necessary for the safe return of the Indian child to their home have not been provided.

Requirements to Terminate Parental Rights

Termination of parental rights may not be ordered without a court determination that all of the following are true:

- The continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child as provided in the testimony from a qualified expert witness; and
- Active efforts were provided to the family with culturally appropriate remedial and rehabilitative services designed to reunify the family; and
- Active efforts failed to remedy the concerns that required court intervention for the Indian family (25 CFR 23.120-122).

Qualified Expert Witness (QEW)

The termination hearing must include testimony from a QEW that the continued custody of the Indian child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the Indian child; see [NAA 205, Indian Child Welfare Case Management](#).

Notice of Hearing to Terminate Parental Rights

The caseworker must send the DHS-120, American Indian/Alaska Native (AI/AN) Child Case Notification form and MDHHS-5598, American Indian/Alaska Native (AI/AN) Child Tribal Enrollment/Eligibility Verification form; and all other required notice attachments (petition, mailing recipient contact list, etc.) **by registered mail with return receipt** to **all** the following:

- Parent(s).
- Indian custodian(s), if any.
- Tribe(s), when known or upon receipt of verification from the Midwest Bureau of Indian Affairs of the Indian ancestry of that tribe.
- Midwest Bureau of Indian Affairs (as designated for Michigan by the Secretary of the Interior).
- Bureau of Indian Affairs Regional Office specific to the tribe/state; if tribe is not located in the Midwest Bureau of Indian Affairs region.
- If a specific tribe is undetermined, notification must also be sent [Addressed to the ICWA Designated Tribal Agent for Service of Notice per Federal Register (81 FR 10887)] to:
 - Tribe(s) located in the county where the offense against the child occurred, in which the offense committed by the juvenile occurred, **and** in which the minor is physically present; **or**
 - The tribe(s) located in the county the incident occurred and in which the minor is physically present.

Notification of hearing to terminate parental rights must be **received** by all those listed above at least 10 calendar days before the hearing date.

A copy of the DHS-120, MDHHS-5598, other required notice attachments, and return receipt must be filed in the case record and with the court of jurisdiction. Failure to complete proper notice may jeopardize and nullify the court proceedings.

**VOLUNTARY
CONSENT TO
TERMINATION OF
PARENTAL RIGHTS
Release**

Caseworkers must file court form PCA 305, Release of Parental Rights, in the MiSACWIS file for an Indian child in accordance with the Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) for cases involving a voluntary consent to release parental rights; see court form PCA 305, Release of Child by Parent (MCL 712.B.13).

**Withdrawal of
Voluntary Consent
to Release**

The parent's voluntary consent to release parental rights may be withdrawn for any reason at any time before the entry of a final decree of termination or adoption, and the Indian child must be returned to the parent(s) (MCL 712B.13[3-4] and [6]).

**Safe Delivery of
Newborns Law**

Even if a parent surrenders their child under the Safe Delivery of Newborns Law, ICWA/MIFPA still apply; see [NAA 200](#) and [NAA 205](#).

Withdrawal of Voluntary Consent to Release policy also applies to an Indian child surrendered to a Safe Delivery of Newborns Law location. Caseworkers must attach the DHS-4819/DHS-4820 to the MiSACWIS file; see MCL 712.1.

LEGAL BASIS

Adoption and Safe Families Act, 42 USC 601 et seq.

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Indian Child Welfare Act, 25 USC 1901 et seq.

Safe Delivery of Newborns Law, MCL.712.1 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.